

A
DEFENCE
OF
AMICIA,

Daughter of
HUGH CYVELIOK,
Earl of CHESTER.

Wherein it is proved,
That Sir *Peter Leicester* Baronet,
In his Book, Entituled,
Historical Antiquities,
In Two Books;
*The first Treating in General of Great Bri-
tain and Ireland.*
*The second containing Particular Remarks
concerning Cheshire*
Hath without any just Grounds declared
the said *Amiciato* be a Bastard.

By *Sir Thomas Mainwaring* of *Peover*
in *Cheshire*, Baronet.

London, Printed for *Sam. Lowndes* over against *Exeter*
House in the Strand. 1673.

A
DEFENCE
OF
AMICIA

Daughter of
HUGH CLEVELAND

And of
Which is proved
That she was
born in
the year
of the
American
Revolution
in the
State of
New York
and that
she was
born
in the
year
of the
American
Revolution
in the
State of
New York

By J. Thomas
in the
year
of the
American
Revolution
in the
State of
New York



TO

Sir *Peter Leicester*, Baronet.



I will appear
very strange to
those who know
the nearness of
Blood that is
betwixt us, that
I should appear
in Print against you ; and I do con-
fess, it is not without some regret,
that I am constrained so to do : If
you would have been contented to
have delivered what you did con-
ceit, concerning *Amicia*, the Daugh-
ter of *Hugh Cyvelioke*, Earl of
A 2 *Chester*,

Chester, as an uncertainty onely (as you have done that of *Roger*, Son of the said Earl *Hugh*) you know I would have rested satisfied with the Judgment of those many knowing and unconcerned Persons that have dissented from you therein, and would never have given you and the Reader the trouble of any one of these Lines. But since you were so fond of divulging this your supposed new Discovery (notwithstanding your being descended of her) as to determine her in your late published Book, absolutely to be a Bastard; and did also many years since, without any other occasion at all, send a Paper tending to the same purpose, to a then Deputy Herald (though at that time you did wholly mistake the state of the Case) I hope it will not be
taken

taken ill if I endeavor to give her a
publick Vindication.

I might here take occasion to
tell you, that I very much wonder,
when you mention *Ralph Main-
waring*, Cheif Justice of *Chester*,
and his Son *Roger*, and *William
Mainwaring* Younger Son of the
said *Roger*, (which *William* had
Over or Higher Peower by gift of his
said Father) that you do not take
notice that they were all three
Knights, you having seen proof
thereof by many Deeds, where the
word *Dominus* is prefixed to each
of their names, which was not (that
I know of) used to be done to any
in those elder Ages, but those that
were Knights (Clergy Men onely
excepted) and accordingly in the
330 and 332 Pages of your Book,
you own Sir *Thomas Mainwaring* of

Warmincham, to be a Knight upon the like Proofs; as also, why you have not in the descent of the *Mainwarings* of *Peover*, set down *Ranulfus* that is mentioned in *Domesday Book* (whom you truly suppose to be a *Mainwaring*) as also all the other *Mainwarings* that were before the aforesaid Sir *William Mainwaring*, in regard they held *Over-Peover*, or the most part thereof, as well as they held *Warmincham*. For, that *Tadetune* which *Ranulfus* in *Domesday Book* is said to hold in *Mildestric Hundred* is *Warmincham*, it appearing by Ancient Records, that *Manerium de Tetton* & *Manerium de Warmincham* est unum & idem *Manerium*; and it is also clear, that *Ranulfus* was a *Mainwaring*, because, though he be there named without a Sirname, as *Odard* or *Hudard*

dard (the owner of a part of *Dutton*) and many others were, yet the Sirname of *Mesnilwaren* or *Mainwaring* (for that name in Records and Deeds is written very many ways) was as appears in your Book Pag. 111. used in the days of King *William Rufus* (as it also was ever since) and all the Lands that the said *Ranulfus* had in *Cheshire* which are mentioned in your Book, Pag. 422, 423, 426, 427. As also all the Lands that *Ranulfus* held in *Norfolk* were enjoyed by the Family of the *Mainwarings*.

I might also here take notice of your mistake in the 336 Page of your Book, where you blame the Herald for making, in *Queen Elizabeths* time, for the then Sir *Randle Mainwarings* Coat Barry of Twelve pieces *Argent* and *Gules* (for

A 4 which

which you cite *Guillims* Heraldry) but that was the mistake of *Guillim*, and not of the Herald, as appears by the Pedegree then made, which you have often seen. For, the Coat which the Herald did then allow the said *Sir Randle* to have a Right unto (as well as to those two placed in your Book, P. 331. and 333. the first whereof, though cut right, is by you blazoned amiss) was *Argent six Barulets Gules*, which Coat you take notice *Sir Roger Mainwaring* did Seal with; and the direct Line of the said *Sir Roger Mainwaring* presently failing (*Sir Thomas Mainwaring* Eldest Son of the said *Sir Roger*, having issue *Sir Warine Mainwaring*, who had issue a Daughter and Heir) I know no reason but the *Mainwarings* of *Peover*, who (as is confessed by you Pag.

333.) are now next Heir-Male to the *Mainwarings* of *Warmincham*, have a good right to the *Six Barnlets* with which Sir Roger *Mainwaring* of *Warmincham*, Father of Sir *William Mainwaring* of *Peover* did Seal, as well as they have to the *Two Bars*, which Sir *Thomas Mainwaring* of *Warmincham*, Brother of the said Sir *William Mainwaring* did bear.

I might in like manner here, let you know that I do suspect you have branded several Persons in your Book with *Bastardy*, without direct Proof thereof. And although I shall not concern my self for any, but some of those which are by you mentioned, when you write of the base Issue of *Hugh Cyvelioke*; yet if I make it appear that you have there without any certainty aspersed

aspered two other Ladies besides
Amicia. I hope you will have no
just cause to blame,

SIR,

Your most affectionate

KINSMAN

Baddesley, Feb. 27.

167^r.

and Servant

Thomas Mainwaring.

The



The Words of Sir Peter
Leicester, concerning *Amicia*,
Daughter of Hugh Cyveliok,
Earl of Chester, in his *Historical*
Antiquities.

Part 2. Chap. 5. Pag. 134, 135,
136, 137, and 138.

IV. *The Base Issue of Hugh*
Cyveliok.



Aganus, Dominus de Mil-
ton, whom I have seen wit-
ness to a Deed, subscribed
thus —

Filius Bastardus Hugo-
nis Comitis Cestriae.

Roger, witness to a Deed of his Brother
Randles, to the Abbey of S. Werburge,
whom I conceive was a Bastard.

Amicia,

Amicia, the Wife of Ralph Mainwaring sometime Judge of Chester, to whom Hugh Cyvelioke, Earl of Chester, her Father, gave In libero maritagio servitium Gilib, filii Rogeri, scilicet servitium trium Militum : Faciendo sibi servitium duorum Militum, as the words of the Original Deed do run now in the Possession of Sir Thomas Mainwaring of Over Peover Baronet.

Also, another Base Daughter, as I conceive, Married one Bacun, and had Issue Richard Bacun, Founder of the Priory of Roucester in Staffordshire, about the Reign of King John ; for the safety of his Soul, and the Soul of his Uncle Randle, Earl of Chester. Monast. Part 2, pag. 267.

And here I cannot but mislike the boldness and ignorance of that Herald, who gave to Mainwaring of Peover, the Quartering of the Earl of Chester's Coat of Arms. Which device was never done before the Raign of Queen Elizabeth, in the time of Sir Randle Mainwaring, late of Peover, the Elder, my Grandfather by the Mother ; for if he ought of right to Quarter that Coat, then must he be descended from a Cobair to the Earl of Chester, but that
he

he was not; for, the Cobeirs of Earl Hugh, as you see before, were married to Four of the greatest Peers of the Kingdom, the Earl of Huntington, the Earl of Arundel, the Earl of Derby, and the Earl of Winchester's Son and Heir, who lived not to be Earl: Neither was Mainwaring then an equal Competitor to have Married a Cobeir to the Earl of Chester; and it is plain, Ex Placitis, 18 Hen. 3. Rot. 14. in the Tower of London, where the Cobeirs implead John the Scot, Earl of Chester, for their part; there is no mention of Amice claiming any part, or any from or under her in the Record: Besides, all Antient Authors of those times, as Polychronicon, Matthew Paris, Knighton, Stow, and others, would not have omitted her amongst the rest which they have set down, had she been a Cobeir, which also she must needs have been, had she been Legitimate; for Hugh Cyveliok never had any other Wife but Bertred, and she survived him.

And though Amice, in the Deed before mentioned, is stiled Filia Hugonis Comititis, without the Addition or Note of Bastard; it was very usual in those elder ages so to do: The like we find of Geva, Base Daughter

Daughter of Hugh Lupus, and several others.

V. Concerning this Bertred, the Wife of Hugh Cyveliok, I cannot omit the Falsities and Absurdities of some Authors, as Powel on the Welsh History, p. 295. and Ferne in his Lacy's Nobility, p. 53. Both of them calling this Bertred by the name of Beatrix, and saying she was the Daughter of Richard Lucy, Chief Justice of England, a most gross falsity. I am very certain, that Hugh Cyveliok's Wife was not Daughter of Lucy, nor ever called Beatrix in any old Deed or Record, though I find by good authority that there was a Woman called Beatrix Lucy, but never Wife of Earl Hugh.

The Death of Hugh Cyveliok
Obiit. 1181.

THis Hugh, Earl of Chester, died at Leek in Staffordshire, and was buried at Chester, Anno Dom. 1181, 27 Hen. 2. Hoveden, Pag. 615. With whom, Westminster, Polychronicon, and Cambden

Cambden inter Comites Cestriae, do all agree.

He was Earl of Chester Twenty eight years; and gave the Church of Bettesford to the Prior and Canons of Trentham, after the death of William Barba, who at the time of this Grant possessed the same, a Copy of which Deed, I received from Sir Simon Dews Baronet.

Now because I find that some are displeased at my placing of Amice, sometime the Wife of Ralph Mainwaring, Judge of Chester, among the Base Issue of Hugh Cyveliok, Earl of Chester; and also, that I am informed that three eminent Judges and four Heralds, are of opinion, That she was Legitimate, and not a Base Daughter of Earl Hugh. It is very necessary, that I put down here my Reasons why I have so placed her, protesting withal, that I have not done it out of any prejudicate opinion, or calumny intended in the least, but onely for the truths sake according to the best of my judgment, and that after a long and diligent scrutiny made herein; for I must ever acknowledge myself to be extracted out of the Loyns of this Amice, by my own Mother; but you know the old saying of Aristotle, Amicus Plato, Amicus Socrates,

Socrates, Sed magis amica veritas. Neither were Bastards in those elder Ages of such disrepute as now in our days, Memini me alicubi legisse (saith Spelman in his Glossary on the word Bastardus) Priscos septentrionales Populos etiam spurios admisisse in successionem; and where he farther tells us, that King William the Conqueror began his Letter to Alan, Earl of Little Britain, as he did many other more, in these words, Ego Willielmus cognomento Bastardus. Of which Title (it seems) he was not ashamed, otherwise he would never have used it himself.

And therefore the Question being no more then this, Whether Amice was a Base Daughter, or no? I will first answer those Reasons which seem to be the cheif ground of those worthy Persons abovesaid, who think Amice was no Bastard, and then in order set down my own Reasons, why I conceive her to be a Bastard; submitting my self wholly to the judgment of all Learned Persons herein.

The

The Reasons that She was no Bastard.

First, Our Common Law alloweth not that any Lands can pass in libero Maritagio with a Bastard Daughter, Coke upon Littl. fol. 21. b. And therefore Amice having Land given with her in libero Maritagio by the Deed, it must be presumed that she was no Bastard.

Ans^r. To which I answer, That it is true, the Law is so taken at this day with us; but that the Law was so taken in the elder ages of Henry the Second, when Hugh Cyvelioke lived and upwards, I very much doubt; and if we mark well this Grant, it is the Grant of Earl Hugh to Ralph Mainwaring with Amice his Daughter, in Frank-marriage of the Service of Gilbert, Son of Roger, to wit, the Service of three Knights Fees, by doing the Service of two Knights Fees to the said Earl and his Heirs; which is rather a Release of the Service of one Knights Fee, then the Grant of any Land. But to pass by this, I say, That the Common Law in sundry things is

altered at this day, from what it was in former Ages, long after Henry the Second, Coke upon Littl. fol. 34. Sect. 39. Coke ibid. fol. 3. a. fol. 8. a. At the bottome of the Page, and on the other side (b) at the bottome, Fol. 26. b. Sect. 29. and infinite other particulars may be cited. And that in this particular also of passing Land in libero Maritagio with Bastards, the Law seems clearly to be altered herein since the Reign of Henry the Second. For, the common practise I take to be the Common Law, and I shall give you here one Precedent made about the Raighn of King Stephen (and doubtless many others might be mustered up from those elder ages, if any curious person would take pains to search old Deeds and Records) which Deed I received from Sir Simon Dewes, transcribed out of a Manuscript in Arundel House in London, belonging antiently to the Barons of Stafford, wherein the old Charts belonging to the Basslets of Drayton-Basslets in Staffordshire were inrolled about Richards the Second's time. Ibid. fol. 67. a.

Ranulfus Comes Cestriae Willielmo Constabulario & Roberto Dapifero & omnibus Baronibus suis & hominibus Francis & Anglicis totius Angliae salutem.

tem. Sciatis me dedisse & concessisse
 Gevæ Ridell Filiz Comitis Hughes
 Draytunam cum pertinentiis in libero
 conjugio, sicuti Comes Hughes ei in
 libero conjugio dedit & concessit. Et
 teneat bene & in pace, honorifice, & li-
 berè ut melius & liberius tenuit tempore
 Hugonis Comitis & aliorum meorum an-
 ecessorum eisdem consuetudinibus &
 libertatibus. Testibus Gilherto Filio
 Ricardi, & Adelizâ sorore mea, &
 Willielmo Blundo, & Alexandro de
 Tresgor, & Rogero de Bellocampo, &
 Willielmo de Sais, & Roberto de Sais,
 & Ricardo Filio Aluredi, & Hugone Fi-
 lio Osberti, & Henrico de Chalder: A
 pad Saintonam.

*Wherein Geva is called Daughter of
 Earl Hugh Lupus, as Amice in that other
 Deed is termed Daughter of Earl Hugh
 Cyveliok. Now that Geva was a Bastard
 is very plain out of Ordericus, a Man
 that lived in that very age, he tells us, Lib.
 10. pag. 787. speaking of Hugh Lupus
 his death — Richardus pulcherrimus
 puer quem solum ex Ermentrude Filia
 Hugonis de Claromonte genuit, &c.
 Richard, a brave youth; whom onely Hugh
 Lupus begot on Ermentrude, Daughter of
 Hugh*

Hugh de Claremonte, &c. Nor can this be restrained to the onely Son, for then it must have been otherways expressed; and if Hugh Lupus had any other Son or Daughter by Ermentrude, then cannot Richard be said onely to be begotten on her by Earl Hugh, and so Geva was a Bastard, or else Ordericus lies. Also the same Author tells us, Lib. 4. p. 522. that Hugh Lupus had also many Base Sons and Daughters by several Strumpets, who were almost all swept away by sundry misfortunes; and very probably, if Hugh Lupus had any more Legitimate Children by his Wife, besides Earl Richard, either Son or Daughter, Ordericus would have Recorded them as well as he hath put down others in like Nature, being indeed his usual method through the whole course of his History. And had Geva been Legitimate, then her Issue ought rather to have succeeded into the Earldom of Chester, then Randle de Meschines, after the Death of Richard, Earl of Chester, for as much as the Sister and her Heirs, ought to inherit before the Aunt and her Heirs; and howbeit many Earldoms have descended to the Heirs-males, and not to the Heirs General, yet in this case were no Heirs-male, but two Females,

Females, an Aunt Legitimate, who had it, and a Sister not Legitimate: And show me a Precedent, where ever the Heirs of an Aunt inherited before the Heirs of a Sister, both legally born, and no Heirs-male left, unless in case of Forfeiture by Treason, or some other great cause to hinder the same.

Secondly, Add to these the words of Glanville, Chief Justice of England, who lived under Henry the Second, in that very age with Amice, Lib. 7. cap. 1. Quilibet liber homo quandam partem terræ suæ cum Filia suâ, vel cum aliqua alia qualibet muliere dare potest in Maritægium. siue habuerit heredem, siue non, velit hæres vel non, imò & eo contradicente. And if a Man might give Land then in Free-marriage with any Woman whatsoever, then he might give it to his Bastard, and then the Law is now changed, for now it must be of the Donors Blood, and a Bastard is now said not to be of the Donors Blood, Quasi nullius Filius, and it seems to me, that in those elder ages, Bastards were reputed of the Blood by the frequent appellation of them by the names of Uncle, Brother, Daughter, Son, and Cassin: Besides, our Laws were then imperfect, dark, and obscure in most things, till Bracton,

under King Henry the Third, compiled the
Body of our Laws, and brought them into a
method.

And now I have done concerning this
chief Reason; whereupon those worthy
Judges grounded their Opinions; and we
daily see Opinions of Lawyers follow the
putting of the Case, which many times up-
on mature deliberation, and hearing of the
Case well argued, may then be of another
Opinion.

Now follow the Arguments of
Bessermoment, which I perswade
my self were no Grounds for the
Judges aforesaid.

The disparity of the years between
Hugh Cyvelok and Bertred
his Wife may suppose he had a former
Wife; for Bertred was but Twenty six
years old at the Death of Earl Hugh 1181.
as appears by the Inquisition taken 30 H. 2.
1183. after the death of Hugh Cyvelok;
and Hugh was Earl of Chester Twenty
eight years, which was one or two years be-
fore Bertred was born; besides what years
were run up of his age before his Father
Randle died, which may be supposed to be

a competent term of years; and then it is probably he had a former Wife, and that he staid not unmarried so long as till Berthed was fit for marriage.

Ans^r. Now let us examine the Matter a little; it will give us some light, Robert, Earl of Gloucester, married Mabill, Daughter and Heir of Robert Fitz-Haimon, Anno Dom. 1110. So Stow in his Chronicle, See also Seldon's Tit. Hon. pag. 647. By her he had Issue four Sons and two Daughters. Maud, the younger Daughter married Randle de Gernoniis, Earl of Chester, Father to Hugh Cyvellok. Vincent upon Brook, p. 116. Now suppose we, Maud to be the fourth Child, probably she was not born till about the year 1117. or thereabout; and that about the year 1139. she was married to Earl Randle, whereby Robert, Earl of Gloucester, strengthened his party for Maud the Empress; at that time she cannot well be supposed to be above Twenty two years old, if she were so much. Now Earl Randle died 1153. So that Hugh Cyvellok could not possibly be above Twelve years old at his Fathers death, he might be much less: But suppose we in a middle way, that he was six years old at his Fathers death, which is

more then can be well affirmed, then could not Earl Hugh be above seven or eight years elder then Bertred his Wife; And what great matter is this? I my self was eight years older then my Wife when I was married; but it is much more probable that he never had any other Wife, because he had many Bastard Sons and Daughters, whose heat of youth might by a very timely marriage, have been possibly prevented, or at least asswaged in some measure.

III. Bertred, the Wife of Hugh Cyvellok, was a witness to the Deed in Frank-marriage with Amice, and Amice had a Daughter called Bertred, after the name of the Countess. Ergo, Probably Amice was a Bastard.

Ans. Truly this is of so little weight that it will need no answer; for I yet apprehend no reason in it.

IV. Roger Mainwaring, son of Ralph Mainwaring, calls Randle Blundevil, Earl of Chester and Lincoln, his Uncle in another Deed; wherefore it is to be supposed that Amice was no Bastard, otherwise Roger durst not have presumed to have called the Earl Uncle.

Ans.

Answ. Histories, Deeds, and Records,
 are full of Examples in this nature, where
 we find Bastards frequently called Cousin,
 Brother, Uncle, Son, and Daughter. For
 example, Robert, Earl of Gloucester, Base
 Son of King Henry the First, is frequent-
 ly called in Histories, Brother to Maud the
 Emperess, Hoveden. p. 553. He is also so
 stiled in a Deed made by Maud the Em-
 peress her self, Seldon's Tit. Hon. p. 649.
 Called also Cousin to King Stephen, Orderi-
 cus, pag. 922. Reginald, Earl of Corn-
 wal, another Base Son of Henry the First,
 stiled Avunculus Regis Henrici Secundi,
 by Hoveden, pag. 536. Robert and Ot-
 tiwel, two Bastard Sons of Hugh Lupus,
 frequently called Filii Hugonis Comitis
 Cestrie, and Ottiwel stiled Frater Ricar-
 di Comitis Cestrie, Ordericus, p. 602. &
 783. & 870. Geva a Base Daughter of
 Hugh Lupus, stiled in old Deeds Filia
 Hugonis Comitis, and there also she calls
 Earl Randle her Cousin, Monasticon, Part
 1. pag. 439. Also Richard Bacon, Son
 of another Base Daughter of Hugh Cyve-
 liok, calls Randle Blundevil, Earl of
 Chester, his Uncle, in another Deed, at
 Mainwaring in like manner here stiles
 him in this Deed, Monasticon, Part 2.
 p. 267.

p. 267. Every Man that is but the least versed in Antiquities, knows these things to be very usual.

The Reasons that Amice was a Bastard.

I. IF Hugh Cyveliok had no other Wife but Bertred, then Amice must certainly be a Bastard; for she was not a Daughter by Bertred, as is granted on all sides.

But Hugh Cyveliok never had any other Wife but Bertred. Ergo, Amice was a Bastard.

Now the Affinor is to be proved by the Affirmer, Oportet Affirmantem probare: For as yet I never saw the least proof thereof, either by Deed, Record, or any Ancient Historian, nor yet any inducement of good reason to incline my belief of it; and till this be done, it is unreasonable to impose it upon any Mans belief, by supposing that he had another Wife, for suppositions are no proof at all. It is not enough to suppose Amice might be by a former Wife, but it must be clearly proved, or strongly inferred from

from solid Reason, that it is so, and that Hugh had a former Wife.

Neither is it a sufficient answer hereunto to say, That it is unreasonable to conclude all Children Bastards, whose Mothers cannot be proved, God forbid: But in this Case we find a Wife certainly Recorded, and a Son and four Daughters (who were afterwards Cobeirs, and carried away all Earl Hugh's Lands) clearly proved by Records, and Antient Historians; and also Earl Hugh is certainly known to have had many Bastards both Sons and Daughters, which gives occasion of strong suspicion, that Amice was a Bastard, she being neither Recorded by any Historian, nor ever had or claimed any Land as a Cobeir; and therefore here is a necessity of proving a former Wife; which, for my part, I believe firmly Earl Hugh never had.

2. Whatsoever is given in Frank-marriage, is given as a Portion. Now the Release of the Service of one Knights Fee in Frank-marriage, seems not a competent Portion for a Legitimate Daughter of the Earl of Chester, especially for the eldest Daughter, for so she must be, being of the first venter, which always is more worthy then the second,

would, if she were at all Legitimate. And we find the other Daughters married to four of the greatest Earls in England. All which is a strong presumption, that Amice was a Bastard and no Legitimate Daughter.

To this it may be answered, That possibly Earl Hugh might give Amice a great Portion in Money, though she had no Lands; and I say possibly too, he might give her no Money, or at least nothing considerable. Which great Portion in Money, when it shall appear to be true, may take off the strength of this Argument or Second Reason, till then it must be very pressing.

3. The Ancient Historians of our Nation, as Polychronicon, writ by the Monk of Chester, Henry Knighton, the Monk of Leicester, and others; also Stow and Cambrden have Recorded the lawful Daughters and Coheirs of Earl Hugh. And so the Record of 18 Hen. 3. And had Amice been a Legitimate Daughter, it is likely that these Historians would not all have omitted her, but of her there is Altum silentium among all the Historians and Records which I have yet seen, though indeed

deed I look upon this onely as a probable,
not as a sure evincing Argument.

These were the Reasons which inclined
my Opinion to place Amice in that order
as I have done; but since there are some
Learned Men of another Opinion, I must
leave every Person to the dictate of his
own Reason.

 THE

which I look upon this only as a part of
not as a fore convincing argument.

There were the reasons which induced
my opinion to place a notice in that order
as I have done; but that they are some
further than of another opinion, I will
leave every reader to the decision of his
own reason.

THE



THE DEFENCE

OF
AMICIA,

*Daughter of Hugh Cyvelioke,
Earl of Chester.*



Do very much wonder that you should so peremptorily call *Amicia* a Base Daughter of *Hugh Cyvelioke*, unless you had more sure grounds to go upon: And though it be onely my task to defend the said *Amicia*, yet I do suppose I shall make it appear before I have

have done , that you go upon no absolute certainty, in calling her that was Mother to *Richard Bacon*, Founder of the Priory of *Roncaster* in *Staffordshire*, another Base Daughter of the said *Hugh Cyveliok*, or in calling *Geva* a Base Daughter of *Hugh Lupus*.

At present give me leave to remind you what you have been formerly told, viz. That those Heralds that gave to *Mainwaring* of *Peover* the quartering of the Earl of *Chester's* Coat in Queen *Elizabeth's* time, were Mr. *William Cambden* and Mr. *Sampson Erdeswick* (Persons, who very well understood themselves) and I do not know why you should so much mislike their boldness and ignorance (as you call it) for their so doing : For, though we did not antiently quarter that Coat, it not being usual in that age, when that match was made, for any so to do ; and that it may perhaps in strictness be true, that it doth yet onely belong to those of the whole Blood to Quarter Coats, and that to shew their Right ; yet it being now a common practise for those who are of the half Blood also to do it, to manifest, That they descend of the same Father that those

those of the whole Blood do, I know not why it should be accounted a crime in us, more then in others in the like Case.

As for your Objecting, That *Mainwaring* was not then an equal Competitor, to have married a Coheir of the Earl of *Chester*, the Coheirs being married to Four of the greatest Peers of the Kingdom: We do not say, That he either was an equal Competitor, or that she was a Coheir to Earl *Randle*, she being the Daughter to *Hugh Cyveliock*, by a former Wife, and so but half Sister to the said Earl *Randle*; however, that could have been no substantial Argument to prove that *Amicia* was not Legitimate.

1. Because, sometimes some particular Persons have the fortune to marry Wives far beyond their Degrees or Estates.

2. Neither was Sir *Ralph Mainwaring* so inconsiderable a Person, as perhaps you may conceit him to be. For, besides that, Sir *Roger Mainwaring*, Son of the said Sir *Ralph*, did after the death of the

said Sir Ralph give to Sir *William Mainwaring* his younger Son, *Peover*, as also some other Lands ; the said Sir *Ralph* had also the Lordship of *Waburne* in *Norfolk*, and the Lordships (or great part) of *Rode*, *Blakenhal*, *Warmincham*, *Northerden*, *Astton juxta Kelsall*, *Henbury*, and *Pexbull*. *Willaston*, *Great Warford*, *Little Warford*, *Whelock*, *Winnington*, *Cokishall*, *Tatton*, *Senellestune*, *Smalwood*, and half of *Pichmere*, as also other Lands in *Cheshire* ; the most of which came to Sir *William Trussel*, who about *Edward* the First's time, married *Matilda*, the sole Daughter and Heir of Sir *Warine Mainwaring*, Son of Sir *Thomas Mainwaring*, Son of Sir *Roger*, Son of the said Sir *Ralph* and *Amicia* : And the said Sir *Ralph* was Cheif Justice of *Chester*, which antiently hath been a place of that great repute that Dukes of *York*, *Glocester*, *Exeter*, and *Ireland* ; and Earls of *Nottingham*, *Wiltshire*, *Suffolk*, *Shrewsbury*, and *Derby* ; besides, other great Persons have heretofore enjoyed the same.

3. Neither was the Case the same with the other Daughters of the Earl of *Chester*,

Chester, when *Ralph Mainwaring* married with *Amicia*, as it was afterward, for *Amicia* was married in the life time of her Father Earl *Hugh*; whereas those Four came to be such great Fortunes upon the death of their Brother *Randle*, Earl of *Chester* and *Lincoln*, without Issue, to whom they then became Heirs, they being his Sisters of the whole Blood; and though all, or most of them were married before they came to be his Heirs, yet the said Earl *Randle* having never had Issue, the expectation of that Estate added to their other Portions, must needs make them very considerable Fortunes; whereas *Amicia* was but of the half Blood, being a Daughter of Earl *Hugh* by a former Wife.

And whereas you do acknowledge that you have been informed, That Three eminent Judges, and Four Heralds are of opinion that *Amicia* was Legitimate, and not a Base Daughter, you received that information several years ago; but you were also lately told by one, whom I hope, you have no reason to discredit; that since then, several other Learned Judges and He-

rals had been consulted. All which did concur in the same opinion, that *Amicia* was Legitimate.

But before I come to the Reasons that are by you alleaged, either for or against *Amicia*, give me leave to recite these Three Deeds following, that those who read them, and the Reasons on both sides, may clearly understand the full State of the Case.

Hugo Comes Cestr' Constabular' Dapifer' & omnibus Baronibus suis & Universis Ballivis & hominibus suis Franc' & Anglicis tam presentibus quam futuris salutem. Sciatis me dedisse & concessisse & hac presenti Carta mea confirmasse Radulpho de Menilwarin cum *Amicia* Filia mea in libero maritagio servitium Gilib. filii Rogeri, scilicet, servitium trium Militum faciendo michi servitium duorum Militum ille & heredes sui michi & heredibus meis, quare volo & firmiter precipio ut nullus super hoc eum vel heredes suos vexet, vel amplius quam servitium duorum Militum de hoc prædicto tenemento requirat. Teste R. Abbate Cestr. Bertheia Comitissa Cestr. Sim. Thuschet, Rogero de Livet, Gilib. filio Pigot. Rob. fratre suo

suo, *Frawb. de Ridford. Willielmo de Ase-*
nilmarin, Rob. filio Ham, Bettr. Cam.
Rob. de Mainilmarin, Ran. de Lee, Rad.
Clerico, Petro Clerico qui hanc Kartam fecit
& multis alijs apud Lee.

R *Adulfus de Meidenilmar' omnibus*
presentibus & futuris ad quos presens
scriptum pervenerit salutem. Sciatis me
dedisse & concessisse & presenti carta mea
confirmasse Henrico de Alditelegb in li-
berum maritagium cum Bertrea filia mea
Smelewe cum pertinentiis & Senellest' :
Cum pertinent. & dimid' Pichemere cum
pertinentiis suis & i. Marc. de reddi-
tu annuo in Civitate Cestr' de terra que
fuit Fagun. quam Robert' filius Ernwi de
me tenuit illi & heredibus suis qui de
dicta Bertrea filia mea pervenient habend'
& tenend' de me & heredibus meis in
feodo & hereditate libere & quiete
plene & pacifice in bosco & plano in pratis
& pascuis in aquis viis & in semitis in
vivariis & in molendinis & in omnibus
locis & libertatibus predictis terris per-
tinentibus sicut liberum maritagium melius
& liberius teneri pot' : Et ego & heredes
mei illi & dictis heredibus suis contra
omnes homines dictas terras Warrantiza-
bimus.

binus. Test' Ran' Com' Cestr. Hug'
Com' Ultonie, Phil' de Orreby tunc Justic.
Cestr. Job. de Ptell' Hug. Malebiss. Ric.
de Vern. Ran. de Meidnilwar. Clerico.
Lidulf. de Tuamf' Rob. de Peris, Ric.
de Kingesl. Norm. Pant. Tho. de Orreby,
Alured. de Sulinni. Pet. Chan. Gg. de
Aldith. Ric. de Rodest. Clerico & multis
aliis. •

OMnibus hanc Cartam visuris vel au-
dituris Rogerus de Menilwarin ater-
nam in Domino salutem. Noverit Univer-
sitas vestra me pro salute anime Domini
Ranulphi quondam Comitis Cestrie &
Lincolnie Avunculi mei & pro salute ani-
me mee & animarum antecessorum &
successorum meorum dedisse concessisse &
hac presenti Carta mea confirmasse Deo &
Beate Marie & Abbati & Monachis de
Deulacresse & eorum Grangie de Biveleg.
in liberam puram & perpetuam Elemosy-
nam liberam communam in bosco meo de
Pevere, scilicet, Ut accipiant de eodem
bosco husbot & haybot rationabiliter per
visum alicujus forestariorum meorum
quantum necesse habuerint, sine impedi-
mento aeriarum nisorum meorum ubicun-
que nidificaverint, Præterea dedi eis libe-

ram pessionem & quietam de pannagio
 quinquaginta porcis quanclocunqne volu-
 erint in prœdicto nemore meo de Pevere,
 pro hac autem donatione & concessione
 mea, Ego Rogerus prœdictus & heredes
 mei de prœdictis Abbate & Monachis de
 Deulacresse nichil exigere poterimus, nisi
 orationes & suffragia ordinis Cisterciensis.
 Ego vero & heredes mei sepeditam dona-
 tionem & concessionem meam sepeditis
 Abbati & Monachis & Grangie de Bive-
 leg contra omnes gentes Warrantizabimus
 imperpetuum. Et ut hac donatio mea rata
 & inconcussa in sempiternum perseveret eam
 præsantis Cartæ testimonio & Sigilli mei
 impressione roboravi. Hiis testibus Wil-
 lielmo de Menilwarin. Willielmo Capellano
 de Lanton. Ricardo de Moston. Bened. de
 Cawdray, Johanne de Motlawe, Willielmo
 de Pevere, Hugone de Weloc. Nicolao de
 Wereford, Gilberto Gekell. & aliis.

And now I shall consider of your An-
 swer to the first Reason on the behalf of
Amicia; which Reason, I think, should
 have been expressed to this, or the like
 effect, viz.

Our Common Law neither now doth,
 nor heretofore ever did allow, that

Lands or Services could be passed *In libero Maritagio* with a Bastard Daughter by the Reputed Father, because a Bastard is not *De sanguine Patris*. And therefore *Amicia* having Services given with her *In libero Maritagio* by her Father, it necessarily follows that *Amicia* was no Bastard.

To which, your Answer is, that it is true, the Law is so taken at this day; but you much doubt, whether it was so taken in the elder Ages of *Henry* the Second, and upwards; and to make good what you say, you cite my Lord *Coke upon Littleton* in several places; as also *Glanville*, Chief Justice of *England*, who lived in the same time that *Amicia* did; and you also alledge, that you have found a Precedent where Lands were given by the Father in Free Marriage with his Base Daughter.

To what you urge out of my Lord *Coke*, I do thus say, That I do conceive the Common Law, where not altered by Parliament, is the same at this day that it was formerly; and therefore my Lord *Coke on Littleton*, telling us *Pag. 115. b.* that it is a Maxim of the Law, *That whatsoever was at the Common Law,*
and

and is not ousted or taken away by any Statute, remaineth still. I might thence argue, That if it had ever been at the Common Law, that a Man might have given Lands or Services *In libero Matrimonio* with a Bastard, or one that is not of the Blood, that it would be lawful to do so still, because that part of the Law is not ousted, or taken away by any Statute; but a Man cannot do so now: And therefore the Common Law never was, that a Man might give Lands or Services with a Bastard in Free Marriage, or to one that was not of the Blood. So that those places which you have cited, do not prove, That the Common Law at this day doth vary from what it was in former ages in any particular, but onely that it was taken to be otherwise in those days; and it is but just like some Cases in our *Reports*, which have at several times been adjudged directly contrary to each other, but notwithstanding that, the Law was still the same.

But that I may come as near you as I can, I shall acknowledge, that though the Common Law was ever the same, where not altered by Parliament, yet in former

mer Ages they did in some particulars, take the Law to be otherwise then they now do; and if you could prove, that they did so in this Case of Free Marriage, it would take off much of the strength of this Argument, because that Antient Deeds and Grants (according to what my Lord *Coke on Littleton*, says *fol. 8. b.* at the bottom) are to be expounded as the Law was taken to be at the time of the Grant : But this is so far from making against my opinion, that I think it doth add very much strength thereto; for if it had been taken in former Ages, that Lands might have been given in Free Marriage with a Bastard, or one not of the Blood, it certainly would sometime or other, have been so observed by some of the Sages of the Law; for where the Law hath been taken in one Age after one manner, and in another age after another manner, it is so remarkable, that it could not pass unobserved by all.

Asto what you alleage out of *Glanvil*, who says, *Quilibet liber homo quandam partem terræ suæ cum Filia sua vel cum aliqua alia qualibet muliere dare potest in Maritagium*. I do conceive it is the same thing

thing in Law, and shall be so intended, as if it had been expressly said, *With any Woman of his Kinred* ; and that for these Reasons.

First, Because though such kind of Expressions seem to be Universal, and without any exception at all ; yet they shall not be so largely taken, but shall be expounded so as may agree with the Laws of that Kingdom or Nation, to which they particularly do relate ; and for this I shall give you an example out of Scripture it self. In the Fourteenth Chapter of *Deuteronomy*, and the Twenty sixth Verse, there was a Liberty given to the *Jews* in some Cases, and at some of their Feasts, to eat *whatsoever their Soul lusted after, and whatsoever their Soul desired* : And yet this was not to be expounded universally of all Meats whatsoever (in case they desired the same) but must be meant onely of such Meats as were legally clean, and allowed them to eat by their Law. And thus, when we also say, That any Man that hath Money enough, may buy Lands when he pleaseth, it shall not be understood of any Man whatsoever : For, a
 Traytor,

Traytor, or a Jew, or one that is convicted of Felony, or an Alien cannot purchase Land in *England* ; but it shall be understood of one that is by Law enabled so todo: And so in like manner the words *Cum alia qualibet muliere*, must be understood onely of such a Woman as is capable of such a gift, which a Woman that is a Bastard, or not of the Blood, or a Jew, or an Alien, &c. is not. For in these kind of Gifts, as Mr. *Bracton* tells you, *Lib. 2. cap. 11.* the Land so given is *Liberum tenementum uxoris, & non viri, cum non habeat nisi custodiam cum uxore.*

Secondly, Because I do conceive that *Glanvil* hath immediately contradicted himself, unless by these words, *Cum aliqua alia qualibet muliere*, he understands a Woman that is of the Blood of the Donor : For he tells us in the same Chapter, and the very next words to those that you cite, That none can give Lands *in remunerationem servitii sui*, to hold good after the death of the Donor, unless there be Seisin in the life time of the Donor, which is untrue. If a Man having a mind so to reward his Servants, can give Lands with his Woman-servant

to a stranger, or with his Woman-servant to his Man-servant in Free Marriage. For, where Lands are given *In libero Maritagio*, according to Law, there needs no Seisin; and where they are given contrary to the Law, *viz.* (to one not of the Blood of the Donor) Seisin doth onely make it an Estate for Life, as my Lord *Coke* says in his *Institutes*, Part 1. pag. 21. b. So that it seems clear, *Glanvil* by the words *Cum aliqua alia qualibet muliere*, understands one of the Blood of the Donor, as well as I hope hereafter to prove that *Bracton* doth by the words *Cum aliqua muliere*.

Thirdly, Because that though *Glanvil*, lib. 7. cap. 1. says, A Man may give part of his Heritage to his Bastard; and that also *Bracton* in his Second Book, and beginning of his Seventh Chapter tells us; That Lands may be given *Bastardo in Maritagium cum aliqua muliere*; yet neither of them hath one word at all to prove, That Lands may be given to a Man *cum Bastarda*, whereas in this Case of Frank-marriage, the party *with whom* the Land is given, not the party *to whom* the Land is given, is the principal thing that is considerable herein.

Fourthly,

Fourthly, Because my Lord *Coke* in the *First Part of his Institutes*, fol. 21. b. tells us, That if the King give Land to a Man with a Woman of his Kinred in Frank-marriage, and the Woman dieth without Issue, the Man in the Kings Case shall not hold it for his life, because the Woman was the cause of the Gift; but it is otherwise in the Case of a common Person. And to prove this, in the Margent he cites, 9 H. 3. *Dower* 202. Whereas, if you look *Fitz-Herberts Graund Abridgment*, 9 Hen. 3. *Dower*, 202. the words run thus, *Si le Roy donne certetne tre a un homme ove une feme en mariage, si le bar' nad issue pur la feme il naver la tre apres la morte la feme mes cest issn q' la feme au devaunt enherit, &c.* So that you see in these Cases of Free Marriage, my Lord *Coke* makes no difference between these words, *Ove une feme*, and these words, *With a Woman of his Kinred*; and by the same Reason, being in the Case of Frank-marriage also *Glanvile's* words, *Cum alia qualibet muliere*, are to be understood, with any other Woman of his Kinred only. Also, which is very observable, *Glanvile* was first made Justice of England, 26 Hen. 2.

as Mr. *Dugdale* tells you in his *Chronology of Lord Chancellors, Lord Keepers, Lord Treasurers, Justices, &c.* which was about Forty five years before the 9 *Hen. 3.* Therefore what likelihood is there, that the Law should be differently taken in so short a time, from what it was in the time of *Glanville*, and especially since the Statute of *Westminster*, the Second, was not made till about Threescore years after the Nineth of King *Henry* the Third.

Fifthly, Because the Author of the Book called *The Laws Resolutions of Womens Rights*, Printed by the Assigns of *John More*, 1632. doth tell us, That in old time these Gifts in Frank-marriage were to be made to them of the Kinred, as well as now. His words in his Thirty third Section of *Frank-marriage*, pag. 73. are these. *It was, as I suppose*, more frequent in the old time, that Men gave Lands with their Daughters in Marriage, then it was at this day; but now as then if a Man liberally and freely, without any Money or other considerations, save onely Love and Natural Affection, give Lands or Tenements to another Man, with a Woman which is a Daughter, Sister,

Sister, or Cousin to the Donor in Frank-marriage, whether it be *tempore Matrimonii, vel ante, vel post*. This word Frank-marriage maketh an Estate of Inheritance, *viz.* to the Donees, and the Heirs of their Two Bodies, and they shall hold quite of all manner of Services (except the pure Fealty) till the Fourth degree be past; but the Issue in the Fifth degree, and his Descendant, shall hold of the Donor and his Heirs, as they hold over.

Sixthly, Because the Author of the old Treatise, commonly called *Fleta*, in the Third Book, and Eleventh Chapter, *De donationibus in Maritagiis*, doth imply that these kind of Gifts must be made to them of the Kinred; his very words are these, *Est autem quoddam Maritadium liberum ab omni servitio solutum donatori, vel ejus heredibus usque ad tertium heredem vel usque ad quartum gradum faciendum & debent gradus sic computari, ut Donatorius primum faciat gradum, haeres ejus secundum gradum, haeres heredis tertium, & haeres secundi heredis quartum, qui quidem tenebitur ad servitium ut ad homagium, prius autem minime ne Donator vel ejus heredes per homagium,*

homagii acceptionem a reversione repellan-
tur, sed in quarto gradu pro eo quod tunc
vehementer presumitur quod terra non est
pro defectu heredum donatoriarum rever-
sura, quia etsi propinquos heredes non ha-
beat, vel cum habeat & defecerint ad do-
natorem vel ejus heredes qui homagium
ceperint non erit terra reversura, dum ta-
men aliquis remotus de consanguinitate ap-
pareat, qui jus in hereditatem poterit ven-
dicare alioquin evanescit homagium, &
revertetur. Et cum de sanguine homagium
factum fuerit, extunc obligatur homo ad
servitium, quia servitium semper sequitur
homagium, &c.

Seventhly, Because Bracton, lib. 2.
cap. 7. par. 3. says thus, Et sciendum quod
terra datur aliquando ante sponsalia &
propter nuptias a patre mulieris vel alio
parente ipsi marito cum muliere aliqua
vel utrique simul, sc. tali viro & uxori sue
(quod idem est) & eorum heredibus vel
alicui mulieri ad se maritandam, &c.
And presently after, Fit etiam talis do-
natio ante Matrimonium contractum ali-
quando in ipso contractu, aliquando post
contractum. Which in my apprehension
is as much as to say, That this kind of
Gift can onely be made by the Father,
D Mother,

Mother, or some other Kinsman, (for the word *parens* or *parent* in Latine and French hath oftentimes that significati-
 on) and of this opinion was my Lord
Coke. For in his *Institutes upon Little-
 ton*, pag. 21. b. he tells you, That one of
 those things incident to a Frank-marri-
 age is, that the Woman that is the cause
 of the Gift, be of the Blood of the Do-
 nor, and for this as appears Letter (1)
 amongst other Proofs, he in the Mar-
 gent cites *Bracton*, lib. 2. cap. 7. Also,
 which is very considerable, Mr. *Bracton*
 here useth this expression *Cum muliere
 aliqua*, and yet meaneth a Kinswoman,
 and why then should we think that Mr.
Glanville doth not mean a Kinswoman,
 though he use this expression *Cum alia
 qualibet muliere*, and especially since my
 Lord *Coke* in the very Page of his *Insti-
 tutes* last mentioned, quotes Mr. *Glan-
 ville*, lib. 7. cap. 18. And amongst others,
 that expression of his *Cum aliqua muliere
 in Maritagium*; and also in the Margent
 cites *Glanville*, lib. 7. cap. 1. (the very
 place on which you frame your Argu-
 ment) which he would never have
 done, if he had thought the opinion of
Glanville had been contradictory to his
 own.

own. And if there had been any such thing, as that the Law in this point had been severally taken in so very short a space, as betwixt the time of *Braddon* and *Glanville*, sure my Lord *Coke* would in that place have taken notice thereof.

Eightly, and lastly, The Law appears to be the same in this Case which it was in *Glanville's* time, because as *Littleton* tells us in his 271 *Section*, Gifts in Free-marriage were by the Common Law before the Statute of *Westminster* the Second. Now the Common Law hath always been the same, and as my Lord *Coke* tells us in his First Part of *Institutes*, fol. 115. b. hath no Controuler in any part of it, but the High Court of Parliament, and if it be not abrogated or altered by Parliament it remains still: But the Parliament hath made no alteration concerning Gifts in Free-marriage, except the said Statute of *Westminster* the Second, cap. 1. By which they turned the Estate that passed by those Gifts in Fee-simple into an Estate Tail, (all Inheritances being Fee-simple before the said Statute) so that in other respects the Law in this Case remains as it did.

And that this is so, I conceive is very clear, because, I suppose neither you, nor any other person, can tell any one particular in which the Common Law is, or hath been altered but by Act of Parliament: Neither could there be any occasion to alter the Common Law, or to take it otherways in this particular then they did formerly, because since there were Estates in Tail, there could be no great occasion to make Gifts in Free-marriages; and therefore my Lord *Coke* says in his First Part of *Institutes*, fol. 178. b. That such Gifts are almost grown out of use, and serve now principally for Moot Cases and Questions in the Law, that thereupon were wont to arise.

Neither is there any weight in what you say, That it seems to you, that in those elder Ages Bastards were reputed of the Blood, by the frequent appellation of them by the names of Uncle, Brother, Daughter, Son, and Cousin; for, by the same Reason you should repute them of the Blood now, this Age being as civil to them in their expressions, as any former Age could possibly be.

And

And for the Precedent you give me, wherein you say Lands were given *in libero maritagio* with a Bastard, I conceive it will not hold;

Because it doth not certainly appear, that *Geva* was a Bastard; for, in all the *Records* that you cite, she is called Earl *Hugh's* Daughter; and in one of them, she calls *Randle* Earl of *Chester* her Cousin, which makes it probable that she was *Legitimate*, especially, since I do not find by any *Deed*, *Record*, or *Author* whatsoever, that she is at any time called a Bastard.

As for your saying, That it is plain out of *Ordericus*, p. 787. that *Geva* was a Bastard; because, speaking of *Hugh Lupus* his death, he adds these words, *Richardus autem pulcherrimus puer quem solum ex Ementrude Filia Hugonis de Claramonte genuit*. I am not satisfied, but he might as well mean, that he was the *only Son* which Earl *Hugh* had by *Ementrude*, as that he was the *only Child* that he had by her. For, there is no necessity to take the word *solum* adverbially; neither is it marked as an *Adverb* in *Ordericus* his Book, though it be so in yours, and yet in his Book *Adverbs*

D 3

are

are usually marked. And though that *Ordericus* (if his meaning were so) might have worded it more clearly, yet he many times expresseth himself worse then he doth here, and particularly *Pag. 871.* And though he tells us, *Pag. 522.* that *E pellicibus plurimam sobolem utriusque sexus genuit* ; yet he doth not say that *Geva* was one of them.

Neither is there any force in what you alledge, that probably if *Hugh Lupus* had any more *Legitimate Children* by his Wife besides *Earl Richard*, either Son or Daughter, that *Ordericus* would have Recorded them as well as others, being indeed his usual method through the whole course of his History. For he could have no *Legitimate Son* but *Earl Richard*, unless he had another Wife besides *Ementrude* (*Ordericus* being expresse therein) and possibly for some Reasons he might have another Wife besides *Ementrude*: But whether *Geva* was by a First or second Wife, I know no necessity to conclude that *Ordericus* should Record her, I finding no such usual method of his, as this which you speak of: For he doth not (that I see) make it his business to Record what
Wives

Wives or Children the Earls of *Chester*, and other great Men had, but onely speaks of them occasionally, and so he also doth of some of their *Illegitimate Children*; but if he made it his design to give an exact account of these things, he ought to reckon *Geva*, either amongst the lawful, doubtful, or illegitimate Children of *Hugh Lupus*.

And as to your Objection, That if *Geva* had been Legitimate, her Issue ought rather to have succeeded into the Earldom of *Chester*, then *Randle de Meschines*, after the death of *Richard* Earl of *Chester*, That doth not at all follow, because, it is possible the Earldom of *Chester*, at that time (as most times Earldoms anciently were) might be Entailed on the Heirs-males onely, and then the Male Line being extinct, why might not the King confer it as well upon *Randle de Meschines*, who was a near Kingman, as upon a stranger? Which later course is also usual at this day. And it is very probable, that the Earldom was Entailed on the Heirs-males onely, for *James York* in his *Union of Honor*, p. 105. says, That this *Randle* was made Earl by Grant of King *Henry* the First; and

if so, it came not to him by Descent : So that all which you here object is fully answered. But if it had been so, that the Earldom had been to Descend to the Heirs General ; if *Geva* was Daughter of *Hugh Lupus* by another Wife, besides *Ementrude* ; then the Earldom of *Chester* would have Descended from Earl *Richard* to *Randle Meschines* by his Mother, being Aunt of the whole Blood to *Richard*, and not to his Sister *Geva*, or her Issue, they being but of the Half Blood to him.

And whereas you desire me to shew you a Precedent where-ever the Heirs of an Aunt inherited, before the Heirs of a Sister, both legally born, and no Heirs-male left, unless in Case of Forfeiture by Treason, or some other great cause to hinder the same. I shall now shew you where an *Honor* in such a Case came to the Heirs of the younger Sister, and not to the Heirs of the elder Sister, which is full as much as if it were done in the Case of a Sister and an Aunt. If you peruse the *Magazin of Honor*, Collected by Mr. *Bird*, and enlarged by Sir *John Doderidge*, One of His Majesties Justices of the *Kings Bench*, pag. 96. you will

will there find, That whereas *Radulfe*, Lord *Cromwel*, being a Baron by Writ, died without Issue, having Two Sisters, and Coheirs, *Elizabeth* the Eldest married to Sir *Thomas Nevil*, and *Joan* the Younger married to Sir *Hunt Bourcher*: He who had married the Younger Sister, was called to the Parliament as Lord *Cromwel*, and not the said Sir *Tho. Nevil*, who had married the Elder Sister; so that you see no convincing Argument can be brought from the enjoyment of the Earldom by *Randle de Meschines*, however the Case prove to be.

I do therefore still conceive, That it is very clear that Lands or Services never were in any Age passed, *In libero Mari- tagio* with a Bastard, or with any one that was not of the Blood, but onely for Term of Life, and that with Livery and Seisin; and consequently, all persons to whom such *Deeds* or *Grants* were made (unless for life only) are certainly to be concluded *Legitimate*; and if you will bring a *Convincing Precedent* to the contrary, do not produce a *Record* or *Deed* of Lands or Services given with one that you suppose to be a Bastard, or not of the Blood; but first clearly
prove

prove, That the party was certainly a Bastard, or not of the Blood, by some Deed, Record, or Ancient History, and shew Lands or Services so given with her, and then there will be some strength in such a Precedent.

But what will you say, If this Deed which you alledge to be made to Geva, will not at all concern Avicia, if Geva were a Bastard. If you peruse what my Lord Coke upon Littleton, says pag. 21. b. he will there tell you, That these words *In liberum Maritagium*, are such words of art, and so necessarily required, as they cannot be expressed by words equipollent, or amounting to as much. As if a Man give Lands to another with his Daughter *In connubio soluto ab omni servitio*, &c. yet there passeth in this Case but an Estate for Life; for seeing that these words *In liberum Maritagium* create an Estate of Inheritance against the general Rule of Law, the Law requireth that they should be legally pursued. And in this Deed to Geva, the words are not *In liberum Maritagium*, but *In libero Conjugio*; and so are but like the words *In connubio soluto ab omni servitio*, which make but an Estate for Life,

Life, and so might be passed either to a Bastard, or any other person whatsoever. And if you look well on the Deed to *Geva*, it is worded as if it intended onely an Estate for Life, there being no mention of her Heirs, and running also in the singular number, *Et teneat bene & in pace, &c. Ut melius & liberius tenuit, &c.* Also, if you observe my Lord *Coke upon Littleton*, a little before on the same Page, he will tell you, that Four things are incident to a Frank-marriage: The first whereof is, That it be given for consideration of Marriage, either to a Man with a Woman, or as some have held, to a Woman with a Man, (and with this *Brañon, lib. 2. cap. 7.* doth accord.) And the fourth thing is, That the *Donees* shall hold freely of the *Donor*, till the fourth degree be past, (with which the old Treatise called *Fleta, lib. 3. cap. II.* doth agree.) For both which Reasons, this Gift cannot be a Gift in Frank-marriage, because, what is here given, is given to *Geva* alone, and not to an Husband with her; as also, there are here *no Donees*, but *one Donee* onely, and the Estate was not to continue until the fourth degree

was

was past, but was onely an Estate intended for the Life of *Geva*, as appears before; whereas what was given by Earl *Hugh* to *Ralph Mainwaring* with his Daughter *Amicia*, and by *Ralph Mainwaring* to *Henry de Alditelegb* with his Daughter *Bertred*, was given in Free-marriage, and their Heirs are mentioned in both the *Deeds*: It remains therefore clear, That the Deed to *Geva* was not a Gift in Frank-marriage, and is also very uncertain, whether *Geva* was a Bastard, as you suppose.

The second Reason alledged to prove, That *Amicia* was Legitimate, hath also yet its full strength, and is not at all weakned by any thing that you have said: For, I think it will still appear, that Earl *Hugh* was much Elder then his Wife *Bertred*; and therefore probably had a former Wife, who dying and leaving him no Issue-male, it is no wonder at all, if he that had so great an Estate, did afterwards marry a Lady that was very much younger than himself. And though you do affirm, That Earl *Hugh* could not be above Seven or eight years older then *Bertred* his Wife, I suppose I shall make it appear, that
there

there might be many more years betwixt them, and that from the Argument upon which you your self do reckon, viz. The Marriage of *Robert* Earl of *Glocester*, with *Mabill* Daughter and Heir of *Robert Fitz-Haimon*. For whether the said *Robert* Earl of *Glocester*, according to *Selden*, married the said *Mabill* in the year 1109. or according to *Stow* in the year 1110. The said *Mabill* might possibly have *Maud*, her second Daughter in the year 1112. Which *Maud*, if she was married in the year 1128. when she was Sixteen years of Age to Earl *Randle de Gernoniis*, might have her Son *Hugh Cyvelioke* in the year 1129. Which if true, the said Earl *Hugh* was Fifty two years of age at his death, for he died in the year 1181. And if so, then he was four years above twice the age of *Bertred*; for she was aged but Twenty four years when the said Earl *Hugh* died, as appears *Rot. de Dominabus pueris, &c. In Scacc. penes Remem. R. sub Tit. Linc. Rot. 1.* And it is certain, That the said Earl *Hugh* was Earl of *Chester* about four years before his Wife *Bertred* was born, besides what age he was of, when his Father died: But I may very well abate
you

you several years of this accompt, and yet Earl *Hugh* be a great deal older then his Wife *Bertred*.

And as to the Third and fourth Reasons, they were onely urged as concurrent Proof, with the Argument brought from the words *In libero Mari-
tagio*, yet I conceive there are many more circumstances than you take notice of: And therefore when I have observed them all, *viz.* That in the first Deed, *Hugh Cyveliok's* Countess is a *Witness*, by which the said Earl gives Services to the said *Amicia* in Free-marriage, and calls her his Daughter: And in the second, That *Ralph Mainwarings* Daughter is also called *Bertred* after the Countess, and *Randle* Earl of *Chester*, a *Witness* to what was given with her in Free-marriage to *Henry de Alditelegb*, who was Great Grand-father to the Famous *James Audley* that warred in *France*. And in the third, How *Roger Mainwaring* in his Gift to the Monks of *Denlacress*, calls *Randle* Earl of *Chester* and *Lincoln* his Uncle; and how, as appears in Mr. *Dugdale's Antiquities of Warwickshire*, pag. 88. *Ralph Mainwaring* was with the said Earl at *Coventry*, and a
Witness

Witness to his Charter to his Burgesſes there; as alſo, how *Roger de Mennemar* and *Henry de Aldithale*, who married his Siſter, *Monast. Angl. Part 1. pag. 291.* are *Witnesses* to the Deed of *Randolf* Earl of *Cheſter* and *Lincoln*, concerning his Abbey of *Deulacreſſ*; as alſo, how the ſaid *Henry de Audley*, *Monastie. Angl. Part 2. pag. 509.* was a *Witness* to the Deed of *Robert de Ferraris*, whoſe Mother was one of the Siſters and Coheirs to the aforeſaid Earl *Randolf*; as alſo, how *Raph Menilwaringe* or *Mainwaring*, as appears by your Book, *Part 2. pag. 130. 131. 139. 143. and 144.* is a *Witness* to one Deed of *Hugh Cyvelinks*, and to three other Deeds of the ſaid Earl *Randolf*, (who in ſome of them is alſo ſtiled Duke of *Britain*, and Earl of *Richmond*) I ſhall leave it (without any more words) to the Reader to judge, whether theſe Circumſtances be not ſuch as do ſhew more great and conſtant intimacy betwixt the ſaid Two Families, then probably would have been, if *Amice* had been a Baſtard; and if ſo, they ſtrongly concur to prove her Legitimate, which is all the uſe that is made of thoſe Arguments.

And

And although you Object, That you frequently find in *Histories* and *Records*, that *Bastards* are called Cofin, Brother, Uncle, Son, and Daughter. I grant it to be true, yet that is either done where the persons came to be very great, as *Robert* Earl of *Glocester* did, or else, are called so by those that write the *Histories* of them, or else are so termed by their Relations, who out of their Humility did condescend so to stile them upon ordinary occasions, though it were not their due. But I believe you can hardly find one that you can certainly prove to be a *Bastard*, or the Son of a *Bastard*, who doth presume in a *Deed* to call so great a person, as the Earl of *Chester* was, his Brother, or Uncle, unless he came to be a very great person himself.

Also I do verily believe, that *Richard Bacun's* Mother was not a Base Daughter of *Hugh Cyvelioks*, nor any Daughter of his at all, because, as you may see *Monast. Angl. Part 2. pag. 267.* When *Richard Bacun* did found the Priory of *Roucester* in *Staffordshire*, his Uncle *Randle* Earl of *Chester* was then living, and a *William* was then Archbishop of *York*,
and

and one whose name did begin with *R.* was then Bishop of *Chester*; but if the Catalogue of Archbishops and Bishops at the end of *Isaackson's* Chronology be right, there was no *William* Archbishop of *Tork*, during the life of *Randle Blundevile*; nor any Man Bishop of *Chester*, whose Christian name began with *R.* except *Richard Peche*, who died in the year 1182. At which time *Randle Blundevile* could not be of age to Seal any kind of Deed, because *Bertred*, the said *Randle's* Mother, was then but about Twenty five years of age. I rather think that *Bacun's* Uncle, mentioned *Monast. Angl. Part 2. pag. 267.* was *Randle de Gernoniis*; for he was Earl from the year 1128. to about the year 1152. And in the year 1143. as *Isaackson* says, *William* Sisters Son to King *Stephen*, was Archbishop of *Tork*, but was ousted of it again, till about 1152. or 1153. And *Roger Clinton* from the year 1128. until the year 1149. was Bishop of *Leichfield* and *Coventry*; which Bishop in elder ages, was the same with the Bishop of *Chester*. But that *Randle* Earl of *Chester*, who is mentioned *Monast. Angl. Part 2. pag. 268.* was indeed

Randle Blundevile, who was Earl from about the year 1180. till about the year 1232. (*Roger Constable of Chester*, who lived in the time of no other Earl *Randle*, being a Witness to the said Deed) But what the said *Randle Blundevile* did, was but by way of Confirmation, which in former times was very usual to be obtained from Princes several Generations after; as to instance in one Case, instead of many. If you read *Monastic. Angl. Part 2. pag. 24 & 25.* you will find King *Henry the First*, Reciting and Confirming what had been given to the Priory of *Huntendune*, and *Pag. 27.* you may find King *Henry the Third* doing the like; and yet there was a greater space betwixt King *Henry the First*, and King *Henry the Third*, than there was betwixt *Randle de Gernoniis* and *Randle Blundevile*. So that you may see, such great persons as these may have some Children which our Historians take no notice of: And you may also discover upon what slender Grounds you have charged *Richard Bacon's* Mother with Bastardy, she being so far from being a Base Daughter to *Hugh Cyveliak*, that she was no Daughter of his at all; but she

she was Sister to *Randle de Gernaville*, and Daughter to *Randle Meschines*.

But I shall now come to Answer the Reasons that you bring to prove, That *Amice* was a Bastard. And your first is this.

If Hugh Cyvelioh had no other Wife but Bertred, then Amice must be certainly a Bastard; for she was not a Daughter by Bertred as is granted on all sides: But Hugh Cyvelioh never had any other Wife but Bertred. Ergo, Amice was a Bastard. And you say the Minor is to be proved by the Affirmer; For, Oportet Affirmentem probare.

To this I say,
First, That by this Rule you your self are as much bound to prove her a Bastard, as I am bound to prove that *Hugh Cyvelioh* had a former Wife; for you as clearly affirm that, as I affirm the other; and there is no reason why Suppositions should pass for Proofs any more in your Case, then they should do in mine.

Secondly, That less Proof by many degrees will serve to prove a thing that

was done long since, then will be required to prove that which was done lately. To instance in one Case, which may serve instead of many: If you be to prove a Deed that was lately Sealed, it will be expected you produce the Witnesses who were present at the Sealing and Delivery thereof. If your Deed was sealed a good while ago, the proving of the Hands will be required: But if the Deed be so old, that none alive could know the Hand-writing of the Witnesses, then the Deed carries its own Proof with it: And the like reason there is in all Cases of Antiquity, and especially in those that are so very ancient as this is. For, if I did onely prove her called a Daughter, being it is so long since, she ought to be presumed Legitimate, unless the contrary do appear. For the proving she was not by *Bertred*, does not prove that she was a Bastard; but onely proves that she was either a Bastard, or else by a former Wife: And our Law at this day is, That a Bastard cannot be proved a Bastard but in his life time; and so it anciently was also, as appears by the Old Treatise called *Fleta*, lib. 6. cap. 39. sect. 14. where

where it is thus said, *Si autem post mortem alicujus apponatur Bastardia, non allocubetur; cum defunctus ad talem exceptionem respondere non poterit.* Now, if a

Person cannot be proved a Bastard immediately after his death, because he cannot answer for himself, What reason is there to charge *Amice* with Bastardy so many hundred years after her decease?

Thirdly, I do conceive that the Passing of Services *In libero Maritagio* with *Amice*, doth absolutely prove that she was a lawful Child, and by consequence by a former Wife: Also, if you take notice of what Sir Henry Spelman writes in his *Glossary*, on the word *Bastardus*, you will find him quoting *Constam. du Normand. Artic. 77. in Annot.* thus, *Quoties enim agitur de honore vel commodo Filiorum, appellatione Filiorum non comprehenduntur Bastardi.* I suppose therefore in this Case, *Amice* would not have been stiled as she is in the said Deed, unless she had been a Legitimate Daughter.

Fourthly, If this Argument of yours would hold as you have framed it, we should have almost nothing but Bastards

in the Ancient times: For if all must be Bastards, if we could not tell who their Mothers were, nor directly prove their Fathers married, we might then conclude, most persons to be Bastards that lived in the First and second Centuries after the Conquest. I shall not offer to put the Case upon any other Family but my own (though it doth reach a multitude of others.) But as to my own, if I mistake not, I find Eight persons whose Wives we are altogether ignorant of, and Six of those persons left Issue, all which Issue, by your Argument would be Bastards; which I am confident you cannot, nor will not suppose. I shall instance onely in one, *viz.* Roger Melin-guarin who in the Reign of King Henry the First, as you may see in the First Part of *Monasticon Anglicanum*, p. 985. gave Plumley (a place in *Cheshire*, near to *Pe-over*) to the Abbey of *S. Werburge* at *Chester*; and as it appears by the said Record, the said Roger Mainwaring had Three Sons, *William*, *Randle*, and *Wida*. Now if you should affirm, That the said *William Randle* and *Wida*, were Legitimate, which I verily believe you will not scruple to do, I could thus frame
your

your own Argument against you.

If Roger Melinguarin had no Wife, then, William, Randle, and Wido, Sons of the said Roger were certainly Bastards: But Roger Melinguarin aforesaid had no Wife. Ergo, &c.

Now if this Argument would hold against *Amicia*, it would also hold against these three Children of Roger Mainwaring, and indeed against all other persons whose Fathers we could not directly and *interminis* prove to have been married (the Proof lying on the Affirmers side) the Absurdity of which is so great, that you your self cry, God forbid all Children should be concluded Bastards, whose Mothers cannot be proved.

But if it be possible for a Man to have one Wife, and we not know who she was, Why may not a Man have two Wives, & we be ignorant who the former Wife was.

Yea, but (say you) in this Case we find a Wife certainly Recorded, and a Son and Four Daughters, who were afterwards Co-heirs, and carried away all Earl Hugh's Lands, clearly proved by Records and Ancient Historians; and also Earl Hugh is certainly known to have many Bastards, which gives occasion of strong suspicion that

Amice was a Bastard; and therefore here is a necessity of proving a former Wife, which you firmly believe Earl Hugh never had.

For answer hereunto, I say that I do believe if *Randle Blundevile* had left any Issue Male, you had not met with such Proof of the Four Sisters his Coheirs, as you now do: For, the falling of that great Estate to them, they being of the whole Blood to their Brother, is the occasion of their being Recorded, and so much taken notice of by Historians. And though this *Earl Hugh* their Father had some Issue that was not lawful, (as many of the great persons of that age had,) yet that hinders not but he might have two Wives; neither had he so many Bastards as you lay upon him, for, I have shewed before, That *Richard Bacun's* Mother was not any Child of his: And I do conceive I have by necessary consequence proved, That the said *Earl Hugh* had a Wife, who was Mother to *Amicia*, though we cannot tell who she was. And it is no great wonder, if the old Historians do not mention who *Hugh Cyvelioek's* first Wife was, for, there is not any of the Antient Writers that I know

know of, who doth make it his business to tell what Wives and Children this Earl Hugh had; nay, I think there is no Antient Historian that doth mention his Wife Bertred; And therefore, we had never known who she had been, but onely because she survived her Husband, and was mentioned in the *Inquisition* taken after his death, and because her Daughters after the death of their Brother came to be Heirs.

Also, it is very hard to tell who were Wives to *Walter Gifford*, the First Earl of *Buckingham*; *John of Henault*, Earl of *Cambridge*; *Baldwin de Ripariis*, Earl of *Devonshire*; *William Fitz-Piers*, Earl of *Essex*; *Robert de Ferrars*, the First Earl of *Ferrars*, (and as some say of *Derby*) *Robert de Ferrars*, Second Earl of *Ferrars*; *Ralph de Maunt*, Earl of *Hereford*; *William de Iper*, Earl of *Kent*; *William de Romara*, Earl of *Lincoln*; *Marchar*, Earl of *Northumberland*; *Gospatrick*, Earl of *Northumberland*; *Robert Mowbray*, Earl of *Northumberland*, and several others; and therefore, what great wonder would it be for *Hugh Cyvelioke*, to have a former Wife, and yet we to be ignorant who that former Wife was.

Your

Your second Reason against *Amictu* will not hold, For though what is given in Frank-marriage, be given in consideration of Marriage, yet it cannot properly be called a *Portion*. For, such Gifts may be made either before Marriage, at Marriage, or after Marriage, as you may see *Coke on Littl. 21. b.* And besides, what is given as a Portion remaineth to the Husband for ever, and is wholly at his disposal; but Lands given in Frank-marriage, shall after the death of the Husband and Wife (if they die without Issue) revert to the Donor: Also any person that pleaseth may give a Woman a Portion, but none but one of the *whole Blood* can give Lands with a Woman in Frank-marriage, as Mr. *Hughes* says in his *Grand Abridgment of the Law*, pag. 970.

But the reason why you call it a *Portion*, is, Because you would have it thought that this was all her Portion, and thence would infer, that she was Illegitimate, because so very little was given with her: But I think any Man that will weigh things indifferently wil easily conclude, That if she had been but a Bastard, yet being a Bastard of so great a person, she

she would have had a great deal more
 given her then these Services, upon
 those terms that they were given, and
 especially considering how you have
 observed out of *Sir Henry Spelman*, that
 Bastards were not in such disrepute in
 those former ages, as they are now;
 and besides, I have made it appear, that
Sir Ralph Mainwaring was no inconsider-
 able person, and therefore would de-
 serve a great deal more. And you may
 also find in one of the Deeds before-
 mentioned, that though the said *Sir Ralph*
 had Issue Male, yet he gave that which
 was of far greater value in Free-marriage
 with a Daughter of his own: But I per-
 ceive, if this Deed of *Earl Hughes* had
 been lost, you would not have believed
 that *Sir Ralph Mainwaring* had had any
 thing with *Amicia*, because then it
 would not have appeared, which is a
 strange way of arguing, about things
 that were done so long since. And, if
 this be a good reason, I wonder you do
 believe that *Earl Hugh* had any Portion
 with his Countess *Bertred*, because (for
 ought I yet know) it doth not appear
 that he had.

As

As for your alleading how the other Four Sisters were married, I have answered that before; and though you say, That if *Amice* had been Legitimate, she being of the first Venter, would have been more worthy then those of the second, though that be true when the Sisters Claim as Heirs to their Father; yet when they come to Claim as Heirs to their Brother (as in this Case) if there be Sisters of two Venters, and the Brother be of the second Venter, then the Sisters that are of the second Venter shall be preferred before those of the first Venter, because those of the second Venter are of the whole Blood. I shall therefore here conclude what I have to say to your second Reason, when I have told you, that I do not understand why you call this Gift of Earl *Hughs* (as you do in two several places) *A Release of the Service of one Knight's Fee.*

Your third and last Reason, I conceive hath no weight at all; For those Historians and others which you speak of there, do not take upon them to give an account of all the Children of *Hugh Cyvelioch*, but onely to tell who were the

the Heirs of *Randle Blundevill* ; and of this you are so sensible, That you confess this Argument not to be evincing, and yet it is as strong as your first Reason. But I cannot but wonder when you name *Mr. Gambden* to be one of those that take no notice of *Amicia*, being you well know that he hath mentioned her in his *Britannia*, in his Description of the County of *Chester* ; and though not as a Coheir to her Brother *Randle*, (for that she was not) yet without the least brand of being a Bastard: Also all those Judges and Heralds, of whom you have formerly heard, and all other persons (except your self) which have seen my Deeds, have from the Expressions therein, been fully convinced, that she must needs be Legitimate ; and amongst others, that worthy and judicious person, *William Dugdale* Esquire, our Norroy, King of Arms, is of the same judgment, as will appear in his *Historical Discourse of the Baronage of England* (which will be shortly ready for the Press.) In which, from the Authorities and Reasons there briefly cited, he concludes, That *Bertred* was a second Wife, and that *Amicia* was a Lawful Daughter
of

of the said Earl *Hugh* by a former Wife, though it be not known who that Wife was, and which is worthy observation, the said Mr. *Dugdale* hath heard you alledge your Reasons to the contrary, but did not find them such as to be satisfactory to him: I hope therefore that I shall not because of my Relation to that Noble Lady, be thought to be Partial or Singular herein, since that it appears she stands vindicated by the Sentence of so many knowing and unconcerned persons; but it will necessarily follow, that you have dealt very severely with your said Grand-mother, and that upon such weak Grounds, as your *Three Pretended Reasons*, which will not prove her to be a Bastard, if those Arguments that were brought on her behalf, were all laid aside.

I have now answered the Objections which you have brought against *Amicia*, the Wife of Sir *Ralph Mainwaring*; but before I conclude, I shall acquaint you, and the Reader, with two Deeds; the first whereof, doth belong to *Thomas Ravenscroft* of *Bretton*, in the County of *Flint*, Esquire; and the other to *Henry Mainwaring*

Mainwaring of Kermineham in Cheshire,
Esquire, the words whereof do here
follow, as they were coppied out several
years since from the Originals by *Wil-*
liam Dugdale Esquire.

SCiant presentes & futuri quod ego
Alanus de Boidele dedi & quiet' clam'
fratri meo Willielmo de Boidele & hered'
suis Doccliften in feod' & dominicis cum
omnibus pertin' infra Limam. Tenend' &
habend' de Domino meo Raul' Com' Cestr'
& hered' suis faciend' servicium de præ-
dict' terr' sc. De quatuor feod' & dimid'
prænominato domino meo Raul' Com' Cestr'.
& hered' suis. Et ego vero Alanus de
Boidele & hered' mei prædict. terr. cum
omnibus pertin' prænominato Willielmo de
Boidele & hered' suis contra omnes homines
& feminas cum pertin' warantisab. Et
quia volo quod hec mea donatio & quiet'
clam' stabilis & inconcussa & rat' perma-
neat præsentis scripto sigillum meum apposui.
His test' Domino Raul' Comite Cestr' do-
mino Rad' de Mainwaringhe tunc Justi-
ciar' Cestr' domino Roberto de Monte alto,
Domino Hug' Dispansar' Domino Haw' Sen'
de Massey, Domino Warino de Vernun, Do-
mina Willielma de Venables. Tama fil'
Willielmi

Willielmi de Goulborn, Petro de Bekering.
 Rob' tunc persona Gropenhale scriptor' huius
 scripti & multis aliis.

S Ciant & omnes presentes quam futuri
 quod ego Robertus dominus Moaldie &
 senescallus Cestrie, concessi & presenti
 Karta confirmavi domui sce' Werburge Vir-
 ginis in Cestria & Monachis ibidem Deo
 servientibus totam Villam de Goostree plene
 & integre cum omnibus pertin' suis in pu-
 ram & perpetuam elemosynam pro salute
 anime mee & animarum predecessorum
 meorum, liberam quietam & solutam ab
 omni seculari servicio & omni seculari ex-
 actione. Ita quod in eadem Villa de Goostree
 nihil ad opus meum vel heredum meorum
 retinui præter elemosynam & orationes &
 tantam libertatem in ipsa eadem Villa præ-
 dictæ domui & prædictis Monachis concessi
 quod in posterum nullus heredum meorum
 quicquid libertatis superaddere possit. Et
 ut hec mea concessio rata & inconcussa per-
 maneat imperpetuum eam sigilli mei appo-
 sitione roboravi. Hiis testibus Rad' de
 Menilwar' tunc Justiciar' Ham' de Masci
 Gwar de Vern' Rad' fil' Sim' Pho' de Or-
 reby. Sim' de Thuschet' Rog' de Menilwar'
 Willielmo de Venables. Toma Dispensatore
 Rob'

Rob' fil' Picot' Petro Clerico Com' Ricardo
de Vern' Rob' de Menilwar' Brito Paulum
Patr' de Moberl' Linlf' de Twamlow. Peers
de Surtm' Ran' de Praers' Ricardo de
Kingsl' Jo' de sancta Maria, & multis
aliis.

I shall also desire you to take notice of what you your self have observed in your *Historical Antiquities*, pag. 160. how that Earl Randle de Gernonijs (as doth appear by the Charter there mentioned) did give the Office of Constable of *Cheshire*, in Fee to Eustace, Baron of *Halton*, and his Heirs; and did constitute the said Eustace (to use the words of the said Charter) *Hereditarie Constabularium & supremum consiliarium post me & super omnes optimates & Barones totius terræ meæ*. As also Pag. 161. how the Baron de Montealto or Moald, being *Dapifer, Seneschal*, or Steward of *Cheshire* in Fee, had the second place, which is also confirmed by several Deeds mentioned by you, Pag. 129. 130. 139. 144. and 162. In all which, the Constable and Steward are named before the Justice of *Chester*, and all the other Barons; which being

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fo,

so, it will be difficult to give a Reason (if *Amicia* was but a Base Daughter) why Sir *Ralph Mainwaring*, in the Deed abovesaid of *Alan de Boidele*, is named as a Witness next to the Earl of *Chester*, and before Sir *Robert de Monte alto* or *Moald*, Steward of *Cheeshire*, and so many of the other Barons; as also in a Deed mentioned in your Book, Pag. 139. why the said *Ralph Mainwaring* is named next to the Countess of *Chester*, and before *Roger*, Constable of *Cheeshire*; as also, why in a Deed in the 143 Page of your Book, the said *Ralph Mainwaring* is again named next to the said Countess, and before *Ralph*, the Steward of *Cheeshire*.

But if *Amicia* was a Legitimate Daughter, the reason thereof will be apparent: For though it be true, that the Husband cannot be Ennobled by the Marriage of his Wife, yet the Earl of *Chester*, being a Count *Palatine*, and one that is confessed by you, Page 152 & 159. to have Royal Authority within himself, and not unfitly to be stiled a *Petty King*, having under him his Constable of *Cheeshire* in Fee, in imitation

tion of the Lord High Constable of England, and his Steward of *Cheeshire* in Fee, after the example of the Lord High Steward of England; and his Noblemen about him, in imitation of the Barons of the Kingdom; as also his Chamberlaine, who supplieth the place of Chancellor, and his Justices of *Chester*, (who have like power to the Judges of the Courts of *Kings Bench* and *Common Pleas*,) as also a Baron of the *Exchequer*, a Sheriff, and other Officers proportionable to those of the Crown: It is no wonder at all, if these great persons did voluntarily give Precedence to Sir *Ralph Mainwaring* during his life, in regard he had married a lawful Daughter to one of their said Earls.

Add hereunto, that when Earl *Hugh Eyeshioke*, did by his Charter mentioned by you, Page 131. acquit the Abbot and Monks of *Stanlaw*, of some Toll in *Chester*, (which could be but a little before the said Earl's death, because, the said Earl died in the year 1181. And the Abbey of *Stanlaw*, as is confessed by you, Page 267. was Founded but in the year 1178.) The said Earl in

his said Charter (contrary to all former Precedents which I have seen) doth name the Justice of *Chester* before both the Constable of *Cheshire*, and Steward of *Cheshire* ; and the Reason thereof, I suppose to be, because the said *Ralph Mainwaring*, who was Son in Law to the said Earl, was then Justice of *Chester*, as he also was, some years in the life time of *Randle Blundevill* ; though the said *Ralph*, as appears, by his aforesaid Deed made to *Henry de Alditelegb*, did afterwards part with the said Office, *Philip de Orreby* being Justice of *Chester*, when the said *Philip* was a Witness to the said Deed.

Now this preeminence could not be given to the said *Ralph*, because he was Justice of *Chester*, (that being below the Offices of Constable and Steward, as appears before) but because of the Relation of the said *Ralph*, to the said Earl : But as this respect was too great to have been shewed him, if he had onely married one that was a Bastard ; so it doth not consist with your conceits, that the said *Amice* was Illegitimate, and that the said *Ralph* had nothing else with her, but the aforesaid Services :
For

For indeed they were not of sufficient value to be a Portion suitable to the Estate of a very mean Gentleman.

I Have at present done with this Discourse, concerning the aforesaid *Amicia*, but being desirous to rectifie all Mistakes which do concern my Family, in all the Particulars that I can, I think it not inconvenient to inform the Reader of one of yours, in the 334 Page of your Book, wherein, speaking of *Margery the Wife of Randle Mainwaring*, you say,

This Randle Manwaring of Over Peover, stiled commonly Honkyn Manwaring in the Language of those times, died 35 H. 6. 1456. Lib. B. page 21. E. Buried at Over Peover in the Stone Chappel on the South-side of the Church: Which Chappel Margery his Wife surviveing, erected, with the two Monuments therein for her self and husband, Anno Dom. 1456.

For albeit it be very true, that the said *Randle Mainwaring* did marry *Margery*, the Daughter of *Hugh Venables*, Baron of *Kinderton*, and Widow of *Richard Bulkeley* of *Chedle* in *Cheshire*, yet the

the said *Margery* did not survive the said *Randle*, and after his death, Erect the said Chappel and Monuments therein : For although on the Eighth day of *August*, in the Year of our Lord God, One thousand six hundred and forty, the Pictures of the said *Randle Mainwaring* and *Margery* were tricked out by a very good hand, as they were then remaining in a Glass Window of the said Chappel, Kneeling, with this Inscription, viz.

*Orate pro animabus Ranulphi Mainwaring & Margerie Uxoris ejus
qui istam Capellam, Anno Dom.
Mcccclvj.....*

And although the Year when the said Chappel was built, is still to be seen in the said Window, yet that doth not prove, that the said *Margery* survived her Husband *Randle*, and erected the said Chappel and Monuments : For, the word *qui* cannot possibly relate to *Margery* alone, but doth, as I conceive, (in the true meaning thereof) relate onely to the said *Randle* : For it appears by an Inquisition taken after the Death of the said *Margery*, that the said *Margery* held

held in Dower, at the time of her Death
 (*Ex dotatione Richardi Bulkeley quondam
 vini sui*) the third part of the Moity
 of the Mannor of *Ebedle*; as also Five
 Messuages in *Middlewich*; One Messuage
 and Sixty Acres of Land and Wood in
Newton near *Middlewich*; Ten Acres
 of Land in *Ashley* and *Hale*; Eight Acres
 of Land in *Occleston*; Six Messuages and
 Two hundred Acres of Land, Meadow,
 and Wood, in *Wharcroft*; Six Messuages
 and One hundred and twenty Acres of
 Land, Meadow, and Wood, in *Halme
 juxta Davenport*; the Moity of the Scite
 of one Water-Mill, and Four Acres of
 Wood in *Little Stanthorne*, and the
 Moity of the Mannor of *Timperley*: And
 it is also found by the said Inquisition,
 that *William de Bulkeley* was the next
 Heir of the said *Margery*.

Now this Inquisition being taken in
 the Twenty seventh year of King *Henry
 the Sixth*; and the said *Randle Main-
 waring*, together with his Three Sons,
Sir John, *William*, and *Randle*, (for the
 said *John* was Knighted in the life time
 of his Father) being all Three mention-
 ed, as then living, in a Deed of mine,
 dated the Saturday next after the Feast

of Saint *Hilary*, in the Thirtieth year of King *Henry* the Sixth ; and I having also in my custody another Deed, dated the Sunday next before the Feast of *Corpus Christi*, in the said Thirtieth year of the said King, made betwixt the said *Randle Mainwaring* the Elder, and Sir *John Mainwaring* Knight, his Son, on the one party, and *John* of *Ashley* of the other party, concerning a Marriage to be had betwixt *Hamnet*, Son and Heir Apparent of the said *John Ashley*, and *Margaret* Daughter of the said Sir *John Mainwaring* (which Deed is also mentioned by you Page 334.) It is from hence very clear, that the said *Margery* did not survive her said Husband *Randle Mainwaring*, and erect the said Chappel and Monuments therein, after the said *Randles* death.

There is also omitted by you in your *Historical Antiquities*, *Agnes* the Daughter of *John Mainwaring* of *Over Peover* Esquire, who was Sister to Sir *John Mainwaring*, and Wife of Sir *Robert Nedham* Knight : And of this Match, there is very good Proof, (which you have been informed of) I having by me the Pictures of the said Sir *Robert* and
 Dame

Dame *Agnes*, as they were carefully
 tricked out the Tenth day of *August*, in
 the year of our Lord, One thousand six
 hundred and forty, from a Glass Win-
 dow in *Holmes Chappel* in *Cheeshire*,
 where they were then Kneeling, with
 the Coats of Arms of *Nedham* and
Mainwaring empaled betwixt them, and
 Three Sons Kneeling behind the said
 Sir *Robert*, and Two Daughters Kneel-
 ing behind the said Dame *Agnes*, toge-
 ther with this Inscription,


*Orate pro bono Statu Roberti Nedham
 Militis & Agnetis Uxoris ejus &
 pro animabus Thomæ, Johannis,
 & Roberti filiorum & pro bono
 statu Matildæ & Johanne filia-
 rum ejus Roberti fieri in Anno
 Domini Mccccxliiij.*

Also, in the Chancel of the Parish
 Church of *Adderley*, in the County of
Salop, being the usual Burial place of
 the *Nedhams* of *Shenton*, in the said
 County, (which Family of *Nedham*, is
 now honored with the Title of Viscount
Kilmorey of the Kingdom of *Ireland*)
 there do yet remain the Monuments
 of the said Sir *Robert* and Dame *Agnes*,
 there

there being on a Blawish Marble Stone,
the Pictures of the said Sir Robert Ned-
ham, and Dame Agnes, and Seven Sons,
and Two Daughters; as also an Inscrip-
tion (all of them of Brasse) which In-
scription is as followeth.

Here lieth Buried under this Stone
the Bodies of Syr Robert Nede-
ham Knight, and Dame Agnes his
Wife, Daughter of John Haynwa-
ring of Beber Elguyer, which sayd
Robert deceased the iii daye of June,
An. Domini 1556. And the said Agnes
deceased the ii daye of Maye, Anno
Domini 1560.

F I N I S.



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